DOCUMENT RESUME

ED 284 136 CG 020 069

TITLE	Model Interstate Income Withholding Act with Comments.
INSTITUTION	National Conference of State Legislatures, Washington, D.C.
SPONS AGENCY	Office of Child Support Enforcement (DHHS), Washington, DC.
PUB DATE	12 Nov 84
CONTRACT	600-82-1057; 600-82-1206
NOTE	42p.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	Children; Child Welfare; *Compliance (Legal); *Federal Legislation; *Financial Support; Income; *Interstate Programs; *Law Enforcement; Parent Responsibility; State Action
IDENTIFIERS	*Child Support; *Income Withholding; Proposed Legislation

ABSTRACT

This document contains the text of the Model Interstate Income Withholding Act, which deals with two of Congress' key goals in enacting the Child Support Enforcement Amendments of 1984: establishing a system for quick, efficient collection of support obligations throughout the country by the use of income withholding systems and improving the interstate enforcement of support obligations. The introduction states reasons for a new statutory provision, lists principles guiding the drafting of the Model Interstate Income Withholding Act, and enumerates income withholding requirements of the 1984 Child Support Amendments. The text of the Model Interstate Income Withholding Act is presented in its entirety, followed by a section-by-section presentation which includes comments after each of the act's 11 sections: (1) General Provisions; (2) Initiation of Income Withholding and Cooperation with Other Jurisdictions; (3) Responsibilities for Entering a Support Order of Another Jurisdiction for Purposes of Income Withholding; (4) Notice; (5) Income Withholding Hearing; (6) Income Withholding (Order/Notice); (7) Notice to Employer/Payor and Other Provisions; (8) Distribution of Collected Support Payments; (9) Changes; (10) Voluntary Income Withholding; and (11) Choice of Law. (NB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

Model Interstate Income Withholding Act With Comments

ED284136

CE 020069

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Child Support Enforcement

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

BEST COPY AVAILABLE

MODEL INTERSTATE INCOME WITHHOLDING ACT

WITH COMMENTS

Introduction	Pgs 1-1 through 1-4
Model Act	Pgs 2-1 through 2-8
Act with Comments	Pgs 3-1 through 3-26

Drafted by the
Child Support Projects
of the
American Bar Association
and
National Conference of State Legislatures
November 12, 1984

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Child Support Enforcement

Advisory Group

Professor Judith Areen
Georgetown University Law Center

Dean Jerome Barron
George Washington University,
The National Law Center

Professor Carol Bruch
University of California (Davis)
School of Law

Dennis Cooper
National Institute for Child
Support Enforcement

Professor Sanford Katz
Boston College Law School

Robert Repel
State's Attorney's Office
of Cook County (ILL)

Professor William Reynolds
University of Maryland
School of Law

Federal Office of Child Support Enforcement Advisory Group

Frank Adamson
Justine Deegan
Vernon Drew
Judith Hagopian
Robert Harris
John Martin
Phil Sharman
David Smith

Reporters

G. Diane Dodson and Robert Horowitz
Child Support Project
National Legal Resource Center for Child Advocacy and Protection
American Bar Association

National Conference of State Legislatures Staff Liaison
Deborah Dale

This model act was made possible through contracts with the Office of Child Support Enforcement, Contract Nos. 600-82-1206 and 600-82-1057. Any statements, opinions, findings, recommendations or conclusions expressed herein do not necessarily reflect the views of this agency, the American Bar Association or the National Conference of State Legislatures.

Introduction

The Model Interstate Income Withholding Act, hereinafter referred to as the Act, deals with two of Congress' key goals in enacting the Child Support Enforcement Amendments of 1984, Public Law 98-378:

1. establishing a system for quick, efficient, collection of support obligations throughout the country by use of income withholding systems, and

2. improving the interstate enforcement of support obligations.

These goals merge in the 1984 Amendments' requirement that each state extend its income withholding system to enforce support orders issued by sister states:

> "The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by absent parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or such child's custodial parent." Social Security Act §466(b)(9), 42 U.S.C. §666(b)(9).

The federal Office of Child Support Enforcement requested the American Bar Association and the National Conference of State Legislatures to convene an advisory group of experts to help develop a model interstate income withholding statute with commentary. These experts are identified on the back of the title page to this Act. Areas of expertise provided by members of the group included family law, constitutional law, conflicts of law, and intra- and inter-state support enforcement. Representatives from the federal Office of Child Support Enforcement also participated. The advisory group's role included assuring that the Model Act meets the requirements of Social Security Act §466(b)(9), quoted above. These additional requirements are summarized at the end of this introduction.

Reasons for a New Statutory Provision

The advisory group concluded that new model legislation was needed to help states meet the interstate withholding requirements of the 1984 Amendments by October 1, 1985 (with some exceptions for states with later legislative sessions when

legislative changes are required). This necessitated making model legislation available to legislative drafters in advance of legislative sessions which would begin in January 1985.

The advisory group also concluded that it was beneficial to create a simple procedure for interstate withholding which merely ties into the state's intrastate system and borrows heavily from its procedures. The chief advantages of this nexus between the interstate and intrastate withholding laws are that it encourages placing responsibility for the inter- and intrastate withholding in the same agency and facilitate use of the state's regular income withholding procedures.

Principles Guiding Drafting of the Model Interstate Income Withholding Act

In addition to the benefits of the Act noted above, several guiding principles were incorporated into this Act:

1. Choice-of-law questions are to be clearly resolved. To the extent possible, the income withholding laws of the state which will impose and enforce the withholding are used so that the court or agency responsible for enforcing them is following familiar procedures.

2. States adopting this Model Act will concurrently modify or will have already modified their income withholding schemes to conform to the Social Security Act §§466(b)(1)-(10) for intrastate income withholding. See discussion in the section that follows. If that is not the case, additional matters will have to be covered in the interstate act.

3. The state will enforce sister state orders by income withholding through whatever legal process, judicial, quasi-judicial or administrative, is used for intrastate cases. A court in the state being asked to impose withholding need only be involved if the court normally has jurisdiction to hear contests to income withholding on support orders of its own state.

4. Some of the practical problems frequently experienced in interstate enforcement, for example, rejecting papers that are not in correct local form, should be specifically addressed.

5. When income is derived out-of-state, interstate income withholding must be pursued.

6. Jurisdiction to modify a support order should not be ceded to the state withholding income (forum state), since neither the obligee nor child reside there.

In addition, it was assumed that most states would follow the specific notice provisions of the Amendments and would not be relying on Social Security Act §466(b)(4)(B), 42 U.S.C. §666(b)(4)(B) which "grandfathers" in existing withholding procedures in a handful of states. In those states, and in the few states which provide no opportunity to contest withholding because it is instituted automatically and immediately in each case, some modifications in local income withholding procedures for interstate cases will be necessary. See commentary following Section 4.

Income Withholding Requirements of the 1984 Child Support Amendments

As previously noted, this Act is keyed to the state's intrastate withholding system. In order to comply with the Child Support Enforcement Amendments of 1984, the following requirements must be met:

1. As of October 1, 1985 (with the exception noted earlier), every support order issued or modified in the state will include "provision for withholding from wages."

2. The withholding process must be commenced for all IV-D clients, without the client applying for it, and without amendment to the underlying support order, when the arrearages are equivalent to one month's support, or sooner at the state's election or when requested by the obligor.

3. Advance notice of the proposed withholding must be sent to the obligor (except in states which in August 1984 had a system of withholding in effect which met state due process requirements, but did not provide advance notice).

4. The obligor may contest withholding, but his defenses are limited to mistakes of fact, e.g., miscalculation of amount owed. Requests to modify custody or support orders may not be raised in defense, nor may denial of visitation. These matters must be raised in other proceedings.

5. The state must notify the obligor within 45 days of the advance notice of the withholding decision in contested cases.

6. Amounts to be withheld are limited by the Federal Consumer Credit Protection Act, §303(b).

7. Employers must comply with withholding orders and will be liable for any amounts not withheld after receiving proper notice. State law must also have a fine provision for any employer who fires, disciplines or refuses to hire an obligor because of the support withholding obligation.

8. Employers need not change their regular payroll pattern and may combine all withheld amounts into one check, with an itemized statement showing amounts attributable to each employee.

9. State law must provide for terminating withholding.

10. State law must give priority to child support withholding over any other legal process brought under state law against the same wages.

11. Wages must be subject to withholding; a state may extend withholding to cover other sources of income.

12. The state must designate a public agency or a publicly accountable private agency to administer the withholding program, to distribute amounts withheld, and to monitor payments.

MODEL INTERSTATE INCOME WITHHOLDING ACT

SECTION 1. GENERAL PROVISIONS

(a) Purpose: The purpose of this Act is to enhance the enforcement of support obligations by providing a quick and effective procedure for the withholding of income derived in this jurisdiction to enforce support orders of other jurisdictions and by requiring that income withholding, to enforce the support orders of this jurisdiction, be sought in other jurisdictions. This Act shall be construed liberally to effect that purpose.

(b) Definitions: As used in this Act:

(1) "Support order" means any order, decree, or judgment for the support, or for the payment of arrearages on such support, of a child, spouse, or former spouse issued by a court or agency of another jurisdiction, whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise.

(2) "Jurisdiction" means any state or political subdivision, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) "Court" means the [insert name] court of this state and, when the context requires, means either the court or agency of any other jurisdiction with functions similar to those defined in this Act, including the issuance and enforcement of support orders.

(4) "Agency" means the [insert name of the income withholding agency] of this state and, when the context requires, means either the court or agency of any other jurisdiction with functions similar to those defined in this Act, including the issuance and enforcement of support orders.

(5) "Child" means any child, whether above or below the age of majority, with respect to whom a support order exists.

(6) "Obligor" means any person required to make payments under the terms of a support order for a child, spouse, or former spouse.

(7) "Obligee" means any person or entity which is entitled to receive support under an order of support and shall include an agency of another jurisdiction to which a person has assigned his or her right to support.

(8) "Income" means [income] as defined in section [cite to definition of income in state withholding law].

(9) "[Employer] [Payor]" means any payor of income.

(10) "Income derived in this jurisdiction" means any income, the payor of which is subject to the jurisdiction of this state for the purpose of imposing and enforcing income withholding under sections _____ through _____ [state's regular intrastate income withholding procedures].

(c) Remedies Additional to Those Now Existing: The remedy herein provided is in addition to, and not in substitution for, any other remedy otherwise available to enforce a support order of another jurisdiction. Relief under this Act shall not be denied, delayed, or otherwise affected because of the availability of other remedies, nor shall relief under any other statute be delayed or denied because of the availability of this remedy.

SECTION 2. INITIATION OF INCOME WITHHOLDING AND COOPERATION WITH OTHER JURISDICTIONS

On behalf of any client for whom the [agency] is already providing services, or on application of a resident of this state, an obligee or obligor of a support order issued by this state, or an agency to whom the obligee has assigned support rights, the [agency] shall promptly request the agency of another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The [agency] shall compile and transmit promptly to the agency of the other jurisdiction all documentation required to enter a support order for this purpose. The [agency] also shall transmit immediately to the agency of the other jurisdiction a certified copy of any subsequent modifications of the support order. If the [agency] receives notice that the obligor is contesting income withholding in another jurisdiction, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

SECTION 3. RESPONSIBILITIES FOR ENTERING A SUPPORT ORDER OF ANOTHER JURISDICTION FOR PURPOSES OF INCOME WITHHOLDING

(a) Upon receiving a support order of another jurisdiction with the documentation specified in subsection (b) from an agency of another jurisdiction [an obligee, an obligor, or an attorney for either], the [agency] [shall enter this order.] [shall file these documents with the clerk of the court in which withholding is being sought. [Alternatively, the obligor or obligee may file the documents specified in subsection (b) with the clerk of the court in which income withholding is being sought.] The clerk of the court shall accept the documents filed and such acceptance shall constitute entry of the support order under this Act.]*

(b) The following documentation is required for the entry of a support order of another jurisdiction:

(1) a certified copy of the support order with all modifications;

(2) a certified copy of an income withholding [order/notice], if any, still in effect;

(3) a copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;

(4) a sworn statement of the obligee or certified statement of the agency of the arrearages and the assignment of support rights, if any;

(5) a statement of:

(a) the name, address, and social security number of the obligor, if known;

(b) the name and address of the obligor's employer or of any other source of income of the obligor derived in this state against which income withholding is sought;

(c) the name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(c) If the documentation received by the [agency] under subsection (a) does not conform to the requirements of

* See comments, page 12, for clarification of use of bracketed language.

subsection (b), the [agency] shall remedy any defect which it can without the assistance of the requesting agency [or person]. If the [agency] is unable to make such corrections, the requesting agency [or person] shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The [agency and court] shall accept the documentation required by subsections (a) and (b) even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

(d) A support order entered under subsection (a) shall be enforceable by income withholding against income derived in this state in the manner and with the effect as set forth in sections 4-11 of this Act and [cite to this state's regular income withholding provisions]. Entry of the order shall not confer jurisdiction on the [courts/agencies] of this state for any purpose other than income withholding.

SECTION 4. NOTICE

(a) On the date a support order is entered pursuant to section 3, the [agency] [court] shall serve upon the obligor, in accordance with section [cite to notice provision for income withholding], notice of a proposed income withholding. That notice shall contain the same information required in section [cite to regular notice section]. The notice shall also advise the obligor that the income withholding was requested on the basis of a support order of another jurisdiction. The date of serving notice on the obligor shall be the equivalent of [the state's own triggering event] for the purpose of measuring time for holding a hearing and rendering a decision.

(b) If the obligor seeks a hearing to contest the proposed income withholding the [agency] shall immediately notify the requesting agency [obligee, obligor or an attorney for either] of the date, time and place of the hearing and of the obligee's right to attend the hearing.

SECTION 5. INCOME WITHHOLDING HEARING

(a) At any hearing contesting proposed income withholding based on a support order entered under section 3, the entered order, accompanying sworn or certified statement, and a certified copy of an income withholding [order/notice], if any, still in effect shall constitute prima facie proof, without further proof or foundation, that the support order is valid, that the amount of current support payments and arrearages is as stated, and that

the obligee would be entitled to income withholding under the law of the jurisdiction which issued the support order.

(b) Once a prima facie case has been established, the obligor may raise only the following:

(1) that withholding is not proper because of a mistake of fact that is not res judicata concerning such matters as an error in the amount of current support owed or arrearage that had accrued, mistaken identity of the obligor; or error in the amount of income to be withheld;

(2) that the court or agency which issued the support order entered under this Act lacked personal jurisdiction over the obligor;

(3) that the support order entered under this Act was obtained by fraud; or

(4) that the statute of limitations under section 11(c) precludes enforcement of all or part of the arrearages.

The burden shall be on the obligor to establish these defenses.

(c) If the obligor presents evidence which constitutes a full or partial defense, the [court] [agency] shall, on the request of the obligee, continue the case to permit further evidence relative to the defense to be adduced by either party, provided, however, that if the obligor acknowledges liability sufficient to entitle the obligee to income withholding, the [agency] [court] shall require income withholding for the payment of current support payments under the support order and of so much of any arrearage as is not in dispute, while continuing the case with respect to those matters still in dispute. The [court] [agency] shall determine those matters still in dispute as soon as possible, and if appropriate shall modify the withholding order to conform to that resolution.

(d) In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses in another state, including the parties and any of the children, by deposition, by written discovery, by photographic discovery such as videotaped depositions or by personal appearance before the [court] [agency] by telephone or photographic means. The [court] [agency] on its own motion may direct that the testimony of a person be taken in another state

and may prescribe the manner in which and the terms upon which the testimony shall be taken.

(e) A [court] [agency] of this state may request the appropriate court or agency of another state to hold a hearing to adduce evidence, to permit a deposition to be taken before the court or agency, to order a party to produce or give evidence under other procedures of that state and to forward to the [court] [agency] of this state certified copies of the evidence adduced in compliance with the request.

(f) Upon request of a court or agency of another state the [courts] [agencies] of this state which are competent to hear support matters may order a person in this state to appear at a hearing or deposition before the [court] [agency] to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the evidence adduced, such as a transcript or videotape, shall be forwarded by [the clerk of the court] [agency] to the requesting court or agency.

(g) A person within this state may voluntarily testify by statement or affidavit in this state for use in a proceeding to obtain income withholding outside this state.

SECTION 6. INCOME WITHHOLDING [ORDER/NOTICE]

If the obligor does not request a hearing in the time provided, or if a hearing is held and it is determined that the obligee has or is entitled to income withholding under the local law of the jurisdiction which issued the support order, the [agency] [court] shall issue an income withholding [order/notice] under section [cite to state's regular income withholding provision for notice to obligor of withholding decision]. The [agency] shall notify the requesting agency [or person] of the date upon which withholding will begin.

SECTION 7. NOTICE TO [EMPLOYER/PAYOR] AND OTHER PROVISIONS

The provisions of sections [governing this state's income withholding notice to the employer, penalties and sanctions against noncomplying employers, employer fees, protections against employer retaliation, payment directions, ability to issue a single check, etc.] apply to income withholding based on a support order of another jurisdiction entered under this Act.

SECTION 8. DISTRIBUTION OF COLLECTED SUPPORT PAYMENTS

(a) The income withholding [order/notice] shall direct payment to be made to [agency]. The [agency] shall promptly transmit

payments received pursuant to an income withholding [order/notice] based on a support order of another jurisdiction entered under this Act to the agency or person designated in section 3(b)(5)(c).

(b) A support order entered pursuant to section 3 does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state. Amounts collected by any withholding of income shall be credited against the amounts accruing or accrued for any period under any support orders issued either by this state or by a sister state.

SECTION 9. CHANGES

(a) Changes in original order: The [agency], upon receiving a certified copy of any amendment or modification to a support order entered pursuant to section 3, shall initiate, as though it was a support order of this state, necessary procedures to amend or modify the income withholding [order/notice] of this state which was based upon the entered support order. [The court shall amend or modify the income withholding [order/notice] to conform to the modified support order.]

(b) Changes in jurisdiction: If the [agency] determines that the obligor has obtained employment in another state or has a new or additional source of income in another state, it shall notify the agency which requested the income withholding of the changes within five working days of receiving that information and shall forward to that agency all information it has or can obtain with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income. The [agency] shall include with the notice a certified copy of the income withholding [order/notice] in effect in this state.

SECTION 10. VOLUNTARY INCOME WITHHOLDING

Any person who is the obligor on a support order of another jurisdiction may obtain voluntary income withholding by filing with the [agency] [court] a request for such withholding and a certified copy of the support order of a sister state. The [agency] [court] shall issue an income withholding [order/notice] under section [regular voluntary income withholding section]. Payment shall be made to the [agency].

SECTION 11. CHOICE OF LAW

(a) The local law of this state shall apply in all actions and proceedings concerning the issuance, enforcement and duration of

income withholding [orders/notices] issued by a [court] [agency] of this state, which is based upon a support order of another jurisdiction entered pursuant to section 3, except as provided in subsections (b) and (c).

(b) The local law of the jurisdiction which issued the support order shall govern the following:

(1) the interpretation of the support order entered under section 3, including amount, form of payment, and the duration of support;

(2) the amount of support arrearages necessary to require the issuance of an income withholding [order/notice]; and

(3) the definition of what costs, in addition to the periodic support obligation, are included as arrearages which are enforceable by income withholding, including but not limited to interest, attorney's fees, court costs, and costs of paternity testing.

(c) The [court] [agency] shall apply the statute of limitations for maintaining an action on arrearages of support payments of either the local law of this state or of the state which issued the support order entered under this Act, whichever is longer.

0015m

MODEL INTERSTATE INCOME WITHHOLDING ACT
WITH COMMENTS

SECTION 1. GENERAL PROVISIONS

(a) Purpose: The purpose of this Act is to enhance the enforcement of support obligations by providing a quick and effective procedure for the withholding of income derived in this jurisdiction to enforce support orders of other jurisdictions and by requiring that income withholding, to enforce the support orders of this jurisdiction, be sought in other jurisdictions. This Act shall be construed liberally to effect that purpose.

(b) Definitions: As used in this Act:

(1) "Support order" means any order, decree, or judgment for the support, or for the payment of arrearages on such support, of a child, spouse, or former spouse issued by a court or agency of another jurisdiction, whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise.

(2) "Jurisdiction" means any state or political subdivision, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) "Court" means the [insert name] court of this state and, when the context requires, means either the court or agency of any other jurisdiction with functions similar to those defined in this Act, including the issuance and enforcement of support orders.

(4) "Agency" means the [insert name of the income withholding agency] of this state and, when the context requires, means either the court or agency of any other jurisdiction with functions similar to those defined in this Act, including the issuance and enforcement of support orders.

(5) "Child" means any child, whether above or below the age of majority, with respect to whom a support order exists.

(6) "Obligor" means any person required to make payments under the terms of a support order for a child, spouse, or former spouse.

(7) "Obligee" means any person or entity which is entitled to receive support under an order of support and shall include an agency of another jurisdiction to which a person has assigned his or her right to support.

(8) "Income" means [income] as defined in section [cite to definition of income in state withholding law].

(9) "[Employer] [Payor]" means any payor of income.

(10) "Income derived in this jurisdiction" means any income, the payor of which is subject to the jurisdiction of this state for the purpose of imposing and enforcing income withholding under sections _____ through _____ [state's regular intrastate income withholding procedures].

(c) Remedies Additional to Those Now Existing: The remedy herein provided is in addition to, and not in substitution for, any other remedy otherwise available to enforce a support order of another jurisdiction. Relief under this Act shall not be denied, delayed, or otherwise affected because of the availability of other remedies, nor shall relief under any other statute be delayed or denied because of the availability of this remedy.

COMMENT

Subsection (a) states the twofold purpose of the Act: first, to establish a quick and effective procedure for withholding of income in the enacting state in order to enforce a sister state support order, and, second, to require that the appropriate agency in the enacting state seek to have its own support orders enforced in other states by the interstate withholding mechanism. The larger purpose of the Act is intended to enhance interstate support enforcement and the Act should be liberally interpreted and construed toward that end.

As used throughout this commentary, the term "forum state" will refer to the state being asked to utilize its withholding system to enforce a sister state order. The term "requesting state" will refer to the state which seeks this assistance from the forum state.

Most state child support and income withholding laws define frequently used terms. These definitions, for the most part, will also apply to income withholding based on a support order of another jurisdiction. However, for purposes of interstate income withholding, some additional terms and special definitions are needed and these are included in subsection (b).

"Support order," as defined in (b)(1), includes every kind of order for the support of a child, spouse or former spouse, no matter the nature of the legal proceeding in which it was entered. The Act applies to support orders issued by an administrative agency of the requesting state, even if the forum state does not use an administrative process for this purpose. Orders for the support of a spouse or former spouse are included in order to comply with the Child Support Enforcement Amendments of 1984, which requires that income withholding, along with other remedies, be available to enforce support due to a spouse or former spouse with whom the child is living. Social Security Act §466(e), 42 U.S.C. §666(e).

While the full faith and credit clause of the Constitution may not require enforcement of orders that are non-final or modifiable, this subsection includes non-final or temporary support orders, as well as orders which are prospectively or retroactively modifiable. Obligors remain free to seek appropriate modifications in the state which originally issued the support order or any other state which has personal jurisdiction over the parties, and these changes will be reflected in changes in the forum state's withholding order. See Sections 2, 9(a). It should be noted that there is no requirement that a support order include in its terms a conditional order of withholding in order to be entitled to enforcement by this means. Arrearages need not be reduced to judgment before this remedy is used and the remedy is available to enforce the ongoing support obligation.

The definition of "jurisdiction," (b)(2), does not include foreign countries. If foreign nations do not utilize income withholding, this Act could not apply. States wishing to include foreign nations under this Act must define "jurisdiction" accordingly. In so doing, it should be required that foreign support decrees will be recognized under this Act only if withholding or a similar remedy would be required under the facts of the case in that country and "reasonable notice and opportunity to be heard" was given "to all affected persons" at the time of the support decree. Griffin v. Griffin, 327 U.S. 220, 229 (1946).

In subsections (b)(3) and (b)(4) the enacting state should insert the names of the court, if any, and agency respectively, which are responsible for income withholding functions. Typically, these functions might include sending notice to the obligor, conducting income withholding hearings, and sending notice to the payor. Depending on the context in which it is used, "court" may refer either to the specific named court in the enacting state or to the court or agency of another state with similar functions. States may elect to use an administrative agency, rather than a court, to issue withholding orders. "Agency" may also refer to a court or agency of a sister state which performs similar functions.

The definition of "agency" refers to the public agency which, in accordance with the Child Support Enforcement Amendments of 1984, each state must designate to administer its income withholding system. It is assumed that in most states the IV-D agency will be the income withholding agency. Where this is not the case drafters will have to examine the Act carefully and insert the name of the IV-D agency rather than the withholding agency where the context requires.

As a rule, where the terms "court" or "agency" appear in brackets, they refer to the court or agency of the enacting state; where they appear without brackets, they refer to the court or agency of the sister state requesting the interstate income withholding. At times the terms [court] [agency] appear together. Legislative drafters in this case should choose the appropriate one for their state.

"Child," as defined in section (b)(5), includes both minor children and children above the age of majority with respect to whom a support order exists. The latter might include college students or other dependant children above the age of majority such as incompetent young adults. Some states impose liability for support of such "adult children." See, e.g., D.C. Code Ann. §21-586 (1981); Ill. Ann. Stat. ch. 40, §513 (Smith-Hurd 1983). Where another state allows post-minority support, the enacting state should make its income withholding scheme available to enforce sister state support orders pertaining to such children. This also is consistent with the Child Support Enforcement Amendments of 1984, which permits enforcement of support obligations through state IV-D agencies "on behalf of a child who is not a minor child." Social Security Act §466(e), U.S.C. §666(e).

"Obligor," as defined in section (b)(6), is the term used in this Act for the person who is required to make payments under a support order. It corresponds generally to the term "absent parent" which is used in Title IV-D of the Social Security Act.

An "obligee" as defined in section (b)(7) includes not only a person entitled to receive support payments - who might be the custodial parent or another custodian - but also an agency to which a person has assigned his or her right of support.

The term "income," (b)(8), for interstate withholding purposes, should be defined the same as in intrastate withholding cases. The state's usual definition may simply be cross-referenced. Using the forum state's definition of income should simplify administration of the interstate withholding program and ensure that policies of the forum state with respect to what income is reachable are not contravened. See, e.g., Young v. Young, 467 A.2d 33 (Pa. 1983) in which a state

law barring attachment of municipal pension benefits was held to bar equitable distribution of those benefits under a sister state divorce decree.

According to federal law, states must include wages in their income withholding system; however, they may extend withholding to include other types of income. Social Security Act §466(b)(8), 42 U.S.C. §666(b)(8). Most states which, prior to the federal Child Support Enforcement Amendments of 1984, already provided for some form of income withholding have a broad definition of income. For example, Illinois defines income as "any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, commission, compensation as an independent contractor, worker's compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district or any other entity created by Public Act." Ill. Rev. Stat. ch. 23 §10-16.2(4) (Smith-Hurd 1983). Many states have adopted broad, catch-all phrases in defining income, such as "earnings or other entitlements to money, without regard to source." Ariz. Rev. Stat. Ann. §§12-2454, 25-323.

The only limit on a state's definition of income are those required by other federal laws. For example, the Louisiana Supreme Court has recently held that maritime worker's benefits are exempt from garnishment for child support due to an anti-attachment provision of the federal Longshoremen's and Harbor Worker's Compensation Act. Thibodeaux v. Thibodeaux, 454 So.2d 813 (1984). Under the Retirement Equity Act of 1984, Pub. L. No. 98-397, Congress has provided that retirement benefits may be withheld to pay for child and spousal support, provided they are based upon a "qualified domestic relations order" as defined in the statute.

The definition of "income derived in this jurisdiction," subsection (b)(10), is essentially a statement of the jurisdiction of the courts or withholding agency in the forum state. This statute is not based on personal jurisdiction over the obligor. Rather, it is based on the exercise of quasi in rem jurisdiction over the obligor's property, i.e., his income which is derived in the forum state. However, in most cases the forum state will be where the obligor works, and this state will also have personal jurisdiction over the obligor. The use of quasi in rem jurisdiction also distinguishes this procedure from procedures to establish a support obligation initially. There must be personal jurisdiction over an obligor to establish the support obligation in the first instance. The ability to establish personal jurisdiction by long-arm statute for the purpose of establishing the initial support obligation is limited. Kulko v. California Superior Court, 436 U.S. 84 (1978).

The key jurisdictional question for income withholding purposes is whether the forum state has jurisdiction over the payor of income, usually an employer. Only with such jurisdiction can the forum state compel the payor to comply with income withholding. In the majority of cases in which the obligor is employed by the payor, the payor will have its principal place of business in the forum state or will be reachable by the state's long-arm statute because it is doing business in the state. The payor's transaction of business in the forum state, i.e., the obligor works there, should satisfy the "minimum contacts" requirement. International Shoe Co. v. Washington, 360 U.S. 310 (1945). In short, the forum state will usually be where the obligor works.* Preference for the obligor's state of employment will promote fairness by minimizing the obligor's expenses if he wishes to contest withholding. The one exception to this rule might be when the requesting state itself could obtain jurisdiction over the payor. In such instances, use of the state's regular withholding scheme may be preferred, without reverting to this interstate Act. When a state can use its own long-arm statute to reach a payor it may be assumed that it would do so rather than use an interstate income withholding request.

There may be other instances where the forum state is not where the obligor works or resides, such as when income withholding is being sought against pension benefits. The forum state may have little or no direct contacts with the obligor. The Supreme Court, in Shaffer v. Heitner, 433 U.S. 186 (1977), cast doubt on the availability of quasi in rem jurisdiction where the defendant does not have "minimum contacts" with the state where the property is located. However, the Court in Shaffer observed that this holding did not apply to the enforcement of a judgment. In the Court's words:

> Once it has been determined by a court of competent jurisdiction that the defendant is a debtor to the plaintiff, there would seem to be no unfairness in allowing an action to realize on the debt in a State where the defendant has property, whether or not that state would have jurisdiction to determine the existence of the debt on an original matter. Id. at 210 n. 36.

Since Shaffer was decided, only two courts have ruled whether or not it applies to enforcement of child support.

---

*The proposed regulations which implement the 1984 Child Support Enforcement Amendments require that the requesting state agency seek withholding in the state where the obligor is employed. 49 Fed. Reg. 36803 (Sept. 19, 1984) to be codified at 45 C.F.R. 303.100(g)(3). Legislative drafters should consult the final regulations on this point.

Both courts held that, based upon the enforcement of an existing judgment exception, Shaffer did not apply. Huggins v. Diehard, 134 Ariz. 98, 654 P.2d 32 (Ariz. App. 1982); Rich v. Rich, 93 Misc. 2d 409, 402 N.Y.S. 2d 767 (N.Y. Sup. Ct. 1978). Although in many cases a support order is not deemed a judgment, policy considerations of Shaffer suggest that it be treated as one in this context. The Court's purpose in not recognizing quasi in rem jurisdiction without the defendant's minimum contacts to the forum state is that it believed a defendant should not be forced to choose between default and defending an unliquidated claim in a state in which he has no contacts. The Court reasoned that it would be unfair to make a defendant litigate the validity of a claim in an alien forum. Child support orders are liquidated claims; the original order, litigated in a state with personal jurisdiction over both parties, sets the exact amount of support. The defendant had his day in court and now, like any other defendant debtor, has limited defenses to an enforcement actions, such as satisfaction of the judgment.

Subsection (c) provides that income withholding may be used in addition to any other remedies that might be available under state law to enforce a sister state support order. These might include remedies avilable through URESA or the Uniform Enforcement of Foreign Judgments Act. Monies collected under other procedures will be duly credited in determining the amount to be withheld under the withholding procedures. See Section 8(b). The withholding procedure should not be delayed because other remedies are available or vice versa. Since the Child Support Enforcement Amendments of 1984 mandate the use of withholding, however, this Act must be utilized in IV-D cases upon the accumulation of arrearages sufficient to trigger withholding.

SECTION 2. INITIATION OF INCOME WITHHOLDING AND COOPERATION WITH OTHER JURISDICTIONS

On behalf of any client for whom the [agency] is already providing services, or on application of a resident of this state, an obligee or obligor of a support order issued by this state, or an agency to whom the obligee has assigned support rights, the [agency] shall promptly request the agency of another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The [agency] shall compile and transmit promptly to the agency of the other jurisdiction all documentation required to enter a support order for this purpose. The [agency] also shall transmit

immediately to the agency of the other jurisdiction a certified copy of any subsequent modifications of the support order. If the [agency] receives notice that the obligor is contesting income withholding in another jurisdiction, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

COMMENT

This section describes the responsibility of the income withholding agency in the enacting state to request income withholding in another state. It is different from the remaining sections which detail the responsibilities of the enacting state upon receiving a request (i.e., acting as the forum state) from another state to obtain and enforce income withholding. Under the Child Support Enforcement Amendments of 1984, both the forum and requesting state may receive incentive payments for child support collected on an interstate basis. Social Security Act §458(d), 42 U.S.C. §658(d).

The income withholding agency is required to request interstate withholding on behalf of its current IV-D clients, as well as for state residents who apply for this service through the IV-D agency. This corresponds to the federal requirement for intrastate cases which requires that income withholding services be made available to IV-D agency clients, both AFDC and non-AFDC. Social Security Act §466(b)(2), 42 U.S.C. §666(b)(2). Non-AFDC families may specifically apply to the IV-D agency to take advantage of the withholding remedy, although many states recognize a private right of action to seek this relief. See, e.g., Cal. Civ. Code. Ann. §4701(b)(1); Tex. Fam. Code Ann. §14.091. In addition, under this section, the agency must also initiate this process for a person who resides out-of-state, when the underlying support order was issued by the agency's state. This will likely occur when the obligee has moved out of state and all the relevant documents, including payment records, are still in possession of the enacting state or when the obligee moved out of state and was receiving payments directly from the obligor, without ever utilizing agency services of a new state. In any event, the obligee could also elect to go to the agency where she or he now resides for purposes of initiating an interstate request for income withholding.

This section also requires the agency to transmit all documentation required by the forum state in order to enter the support order. This means that the agency will have to first determine the forum state's documentation requirements.

This section also requires the requesting state to transmit to the forum state any modifications to the support order, including any termination of the support order. Section 9(a) is the counterpart to this provision, requiring a forum state to amend income withholding in light of any modifications received.

Finally, this section requires the agency to immediately notify the individual obligee when a hearing is scheduled, indicating a challenge to the withholding request. Under Section 4(b), the forum state agency must alert the requesting agency of any pending challenge. Notice to the obligee assures that this individual will be kept aware of case developments and, more importantly, afforded an opportunity to appear at the hearing, either in person, or by telephone (Section 5 (d)) if the individual cares to appear.

SECTION 3. RESPONSIBILITIES FOR ENTERING A SUPPORT ORDER OF ANOTHER JURISDICTION FOR PURPOSES OF INCOME WITHHOLDING

(a) Upon receiving a support order of another jurisdiction with the documentation specified in subsection (b) from an agency of another jurisdiction [an obligee, an obligor, or an attorney for either], the [agency] [shall enter this order.] [shall file these documents with the clerk of the court in which withholding is being sought. [Alternatively, the obligor or obligee may file the documents specified in subsection (b) with the clerk of the court in which income withholding is being sought.] The clerk of the court shall accept the documents filed and such acceptance shall constitute entry of the support order under this Act.]

(b) The following documentation is required for the entry of a support order of another jurisdiction:

(1) a certified copy of the support order with all modifications;

(2) a certified copy of an income withholding [order/notice], if any, still in effect;

(3) a copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;

(4) a sworn statement of the obligee or certified statement of the agency of the arrearages and the assignment of support rights, if any;

(5) a statement of:

(a) the name, address, and social security number of the obligor, if known;

(b) the name and address of the obligor's employer or of any other source of income of the obligor derived in this state against which income withholding is sought;

(c) The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(c) If the documentation received by the [agency] under subsection (a) does not conform to the requirements of subsection (b), the [agency] shall remedy any defect which it can without the assistance of the requesting agency [or person]. If the [agency] is unable to make such corrections, the requesting agency [or person] shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The [agency and court] shall accept the documentation required by subsections (a) and (b) even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

(d) A support order entered under subsection (a) shall be enforceable by income withholding against income derived in this state in the manner and with the effect as set forth in sections 4-11 of this Act and [cite to this state's regular income withholding provisions]. Entry of the order shall not confer jurisdiction on the [courts/agencies] of this state for any purpose other than income withholding.

COMMENT

Subsection (a) describes the responsibilities of the forum state's agency. Upon receiving the request for income withholding and accompanying documentation set forth in subsection (b), the agency will enter the support order by the procedure set forth in subsection (a). Entry of a sister state support order under this Act is the cornerstone of this interstate withholding procedure. Once the order is entered, it is enforceable by the forum state's own income withholding law, with some specific minor modifications to accommodate interstate needs. Subsection (b). It is assumed that states will have enacted an income withholding law or modified their existing one to conform to the Child Support Enforcement Amendments of 1984 by October 1, 1985 or shortly thereafter.

See Social Security Act §466(b), 42 U.S.C.§666(b). It should be noted that this Act may be used only for enforcement of support orders by income withholding. To use other remedies which may be available under state law it will be necessary to use URESA, the Uniform Enforcement of Foreign Judgments Act, a suit on the judgment of another state or some other method of enforcement.

As a general rule, full faith and credit is granted to judgments of a sister state by allowing a suit on the judgment in the forum state. This obviously is a cumbersome process. The Uniform Enforcement of Foreign Judgments Act seeks to circumvent this problem by providing a simpler procedure for registration and enforcement of foreign judgments which would otherwise be entitled to full faith and credit.

Under the traditional view, however, child support orders which are non-final and modifiable are not entitled to full faith and credit. Sistare v. Sistare, 218 U.S. 1 (1910); Restatement (Second) Conflict of Laws §109 (1971). A more contemporary view rejects this notion and would entitle support orders to full faith and credit, regardless of their modifiability. See, Barber v. Barber, 323 U.S. 77 (1944) (Jackson, concurring); Light v. Light, 12 Ill. 2d 502, 147 N.E.2d 34 (1958). Even if the traditional view prevails, a state may recognize a sister state support order under the principle of comity even though not constitutionally compelled to do so. This statute is designed to do precisely that for the specific purpose of allowing income withholding to enforce sister state support orders. It should be noted that under the definition of support order in section 1(b)(1) administrative orders for support as well as judicial orders may be entered and enforced under this Act.

Two kinds of optional language are included in subsection (a). The first choice of language depends on whether the state has chosen to operate its intrastate income withholding system through an administrative agency or through the courts. Model language is provided for both options. Both options are consistent with the 1984 Child Support Enforcement Amendments.

In addition, subsection (a) provides optional language to allow for private party access, whether pro se or through private counsel, to the forum state's income withholding system to enforce a sister state support order. This would be especially logical in states which already permit private parties to initiate income withholding on an intrastate basis. See, e.g., Minn. Stat. Ann. §518.611.1. This option is permissible under the 1984 Amendments but is not required.

If a state uses an administrative enforcement mechanism and does not make it available through private counsel, subsection (a) would read:

> "Upon receiving a support order ... from an agency of another jurisdiction, the [agency] shall enter this order."

If private parties are to be allowed access to the administrative remedy, this section would read:

> "Upon receiving a support order ... from an agency of another jurisdiction, an obligee, an obligor or an attorney for either, the [agency] shall enter this order."

If the withholding system is operated through the courts and the state chooses to allow private party access subsection (a) would read:

> "Upon receiving a support order ... from an agency of another jurisdiction, an obligee, an obligor or an attorney for either, the [agency] shall file these documents with the clerk of the court in which withholding is being sought. Alternatively, the obligor or obligee or the attorney for either may file the documents specified in section (b) with the clerk of the court in which income withholding is being sought. The clerk of the court shall accept the documents filed and such acceptance shall constitute entry of the support order under this Act."

If the state does not wish to allow private party access to the court-based interstate withholding procedure, subsection (a) would read:

> "Upon receiving a support order ... from an agency of another jurisdiction, the agency shall file these documents with the clerk of the court in which withholding is being sought. The clerk of the court shall accept the documents filed and such acceptance shall constitute entry of the support order under this Act."

The list of documents required is largely self-explanatory. Subsection (b)(2) applies only when payments were already being withheld from the obligor's income under an income withholding order or notice, still in effect, previously issued in another state. As used throughout this Act, the term "order/notice" refers to the document submitted to the payor requiring him to withhold support payments from the obligor's income. States

have different names for this document. It may also be called, for example, "employer's notice" or an "order of wage withholding." The enacting state should, where order/notice appears in brackets throughout this Act, substitute whatever term it uses. Throughout this Act the term "income withholding" is used. It should be noted that some states may use different, interchangeable terms, such as wage withholding, wage assignment, income assignment, or the like. Again, the enacting state may substitute its usual intrastate term.

Subsection (b)(3) is included because the triggering event in the state which originally issued the support order, i.e., amount of arrearages necessary to mandate income withholding, will determine when income withholding should commence.

Subsection (b)(4), which requires a statement of arrearages and assignment of support rights, can be met in one of two ways. Either the obligee can submit a sworn statement or affidavit or the requesting agency may certify the arrearages and any assignment of support rights. Agency certification will probably be used in states where public agencies or clearinghouses collect and disburse support payments. In such instances a certified copy of the payment record as of the date of the first arrearage or a certified statement of the arrearages will suffice.

Subsection (b)(5) places a burden on the requesting state to provide the name, address and social security number of the obligor and the names and addresses of obligor's employers and other sources of income derived in the forum state. Requesting states may use the Federal Parent Locator Service (FPLS) to obtain this information. Under the Child Support Enforcement Amendments of 1984, access to the FPLS has been liberalized. A state no longer need exhaust its own locator resources before requesting assistance from the FPLS. Social Security Act §453(f), 42 U.S.C. §653(f). A state may also request assistance from the forum state through that state's parent locator system. Furthermore, as noted in the comments to section 3(c), the forum state's location services may be used if it turns out that the information sent was incorrect.

Subsection (c) requires the forum state agency to take steps to correct faulty or incomplete documentation, without returning it to the requesting agency, when possible. This should avoid unnecessary delays and advance Congress' intent of expeditious handling of income withholding cases. In addition to providing for correction of errors, this subsection requires the agency and court to accept or process documents which are correct in substance but not form.

Examples of cases in which improper documentation is submitted which the state may correct or accept as provided include the following:

1. The forum state requires information to be submitted on a special form or in a special format; the requesting agency does not use this form but nonetheless provides all the required information. The forum state should accept the documents as provided or fill out the correct forms and attach the sworn originals.

2. Incorrect information on the obligor's address or source of income is sent by the requesting state. The forum state, through its normal locate procedures, should attempt to provide this data. This does not place any additional burdens on the forum state which is already required to help sister states in this regard. 42 U.S.C. §654(9); 45 C.F.R. 303.7.

Subsection (d) is the central section of this Act. Once a support order is "entered" in the agency or court through the procedures described in this section, it essentially becomes an order of the forum state for the sole and limited purpose of obtaining income withholding. This subsection makes it clear that the entered order does not confer jurisdiction on the court or agency for any other purpose such as resolution of disputes over custody or visitation or modification of the original support order, whether prospectively or retroactively. See discussion of modification issues in Section 5.

SECTION 4. NOTICE

(a) On the date a support order is entered pursuant to section 3, the [agency] [court] shall serve upon the obligor, in accordance with section [cite to notice provision for income withholding], notice of a proposed income withholding. That notice shall contain the same information required in section [cite to regular notice section]. The notice shall also advise the obligor that the income withholding was requested on the basis of a support order of another jurisdiction. The date of serving notice on the obligor shall be the equivalent of [the state's own triggering event] for the purpose of measuring time for holding a hearing and rendering a decision.

(b) If the obligor seeks a hearing to contest the proposed income withholding the [agency] shall immediately notify the requesting agency [obligee, obligor or an attorney for either] of the date, time and place of the hearing and of the obligee's right to attend the hearing.

COMMENT

On the day the original support order is entered under this procedure, notice of the proposed withholding must be sent to the obligor. The forum state will use its regular notice procedures to notify the obligor of the intent to withhold income. The significance of specifying when advance notice should be sent to the obligor is that, under the new federal law, within 45 days of such notice the state must determine whether income withholding will take place if the obligor contests it.

Because communicating between states takes an indeterminate amount of time, a gap will inevitably occur between the happening of the triggering event in the requesting state and the sending of notice in the forum state. Accordingly, the Act requires the requesting states to "promptly" request (section 2) and the forum state to "promptly" enter (section 3) support orders without specifying an exact time frame for so doing. However, once the order is entered the notice must be sent at once.

The notice should be served according to usual state practice and contain the same information required in an intrastate income withholding notice. According to section 466(b)(4)(B) of the Social Security Act, as amended by the Child Support Enforcement Amendments of 1984, such notice must alert the absent parent to the proposed withholding and to the procedures to follow if he or she wishes to contest such withholding on the grounds that it is not proper due to a mistake of fact.

This notice should state a method and a time period within which the parent must contact the court or agency in order to contest withholding and should state that failure to do so will result in the implementation of withholding. The only added requirement of this Act is that the notice indicate that the proposed withholding is based upon a sister state support order.

The 1984 Amendments generally require that advance notice of the proposed withholding be sent to the obligor, as described in the previous paragraph. However, the law provides an exception for those states which were operating an income withholding system prior to the date of enactment of the 1984 Amendments. They are not required to provide advance notice as described in the Amendments to obligors so long as due process requirements are met. Social Security Act §466(b)(4)(B), 42 U.S.C. §666(b)(4)(B).

States which fall within this exception should modify their withholding systems to provide some form of notice of withholding and an opportunity to contest before money is actually withheld in interstate cases in order to meet equitable and due process concerns. (Often some notice will have been given in intrastate cases when the original support order is made.)

In addition, states which use automatic, immediate withholding as the payment method in every support case, without first requiring any arrearages, will not generally provide for any special notice or contest procedures dealing with withholding. In those cases, the parties are personally before the court at the time a withholding order is imposed and can resolve any disputes regarding withholding at that time. These states will have to enact special notice and hearing procedures as described in the Amendments for interstate withholding cases in order to ensure adequate due process protection for these obligors.

Finally, this section initiates the running of the 45 days a state has to notify the obligor of the proposed withholding, hold a hearing if one is requested, and inform the obigor of whether or not withholding will occur. Section 466(b)(4)(A) Social Security Act, as amended. To further expedite the handling of these cases, this Act places an obligation on the requesting state to promptly take steps to initiate the interstate income withholding process (see Section 2), and upon the forum state to promptly enter sister state orders. See Section 3(a).

SECTION 5. INCOME WITHHOLDING HEARING

(a) At any hearing contesting proposed income withholding based on a support order entered under section 3, the entered order, accompanying sworn or certified statement, and a certified copy of an income withholding [order/notice], if any, still in effect shall constitute prima facie proof, without further proof or foundation, that the support order is valid, that the amount of current support payments and arrearages is as stated, and that the obligee would be entitled to income withholding under the law of the jurisdiction which issued the support order.

(b) Once a prima facie case has been established, the obligor may raise only the following:

(1) that withholding is not proper because of a mistake of fact that is not res judicata concerning such matters as an error in the amount of current support owed or

arrearage that had accrued, mistaken identity of the obligor; or error in the amount of income to be withheld;

(2) that the court or agency which issued the support order entered under this Act lacked personal jurisdiction over the obligor;

(3) that the support order entered under this Act was obtained by fraud; or

(4) that the statute of limitations under section 11(c) precludes enforcement of all or part of the arrearages.

The burden shall be on the obligor to establish these defenses.

(c) If the obligor presents evidence which constitutes a full or partial defense, the [court] [agency] shall, on the request of the obligee, continue the case to permit further evidence relative to the defense to be adduced by either party, provided, however, that if the obligor acknowledges liability sufficient to entitle the obligee to income withholding, the [agency] [court] shall require income withholding for the payment of current support payments under the support order and of so much of any arrearage as is not in dispute, while continuing the case with respect to those matters still in dispute. The [court] [agency] shall determine those matters still in dispute as soon as possible, and if appropriate shall modify the withholding order to conform to that resolution.

(d) In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses in another state, including the parties and any of the children, by deposition, by written discovery, by photographic discovery such as videotaped depositions or by personal appearance before the [court] [agency] by telephone or photographic means. The [court] [agency] on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

(e) A [court] [agency] of this state may request the appropriate court or agency of another state to hold a hearing to adduce evidence, to permit a deposition to be taken before the court or agency, to order a party to produce or give evidence under other procedures of that state and to forward to

the [court] [agency] of this state certified copies of the evidence adduced in compliance with the request.

(f) Upon request of a court or agency of another state the [courts] [agencies] of this state which are competent to hear support matters may order a person in this state to appear at a hearing or deposition before the [court] [agency] to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the evidence adduced, such as a transcript or videotape, shall be forwarded by [the clerk of the court] [agency] to the requesting court or agency.

(g) A person within this state may voluntarily testify by statement or affidavit in this state for use in a proceeding to obtain income withholding outside this state.

COMMENT

This section addresses the hearing an obligor may request if he wishes to contest the income withholding. Under subsection (a) the entered support order, the existing income withholding order, if any, and the sworn or certified statement of the appropriate arrearage (see section 3(a)(4)) may be admitted into evidence without any further proof or foundation required and constitute prima facie proof that, absent a valid defense under subsection (b), the obligee is entitled to income withholding under the law of the jurisdiction which issued the support order. This means that the amount of current support and arrearage is as stated and that the triggering event, i.e., amount of arrears required to commence withholding, of the jurisdiction which rendered the support order has been met.

Once a prima facie case is established, subsection (b) shifts the burden of proof to the obligor. The obligor's defenses are limited. They include those defenses permitted by the Child Support Enforcement Amendments of 1984. According to the Act's legislative history, these defenses are restricted to "mistakes of fact," see Subsection (b)(4), which include "errors in the amount of current support owed, errors in the amount of arrearage that had accrued, or mistaken identity of the alleged obligor." The obligor cannot "contest the proposed withholding on other grounds, such as the inappropriateness of the amount of support ordered to be paid, changed financial circumstances of the obligor, or lack of visitation." H.R. Rep. No. 98-527, 98th Cong., 1st Sess. 33 (1983). Such claims, though important, must be pursued through a separate legal action in the state which has jurisdiction over the original support order.

Limitation of defenses to mistakes of fact distinguishes this Act from URESA and RURESA. Courts have interpreted the latter uniform acts to allow them to consider current support needs and to enter orders for higher or lower support amounts. Balestrine v. Jordan, 275 S.C. 442, 272 S.E.2d 438 (1980); Jarmillo v. Jarmillo, 27 Wash. App. 391, 618 P.2d 528 (1980); McKenna v. McKenna, 253 Ga. 6, 315 S.E. 2d 885 (Ga. 1984). Modification of the support order in the forum state is not permitted under this Act.

In drafting this section, the Advisory Group discussed in great detail the issue of modification of the support amount, both retroactively and prospectively. On policy grounds and for practical considerations, it was determined that modification should not be allowed in the forum state. The policy reasons are as follows:

(1) Experience under URESA has shown that the responding (forum) state frequently has no relationship to the obligee and dependent child, and they usually are not able to appear in person and often are not notified of hearings, resulting in modification orders which are unreasonably low.

(2) Modification claims needlessly delay enforcement actions on existing arrearages. It was the intent of Congress in the 1984 Amendments to establish an expeditious system for enforcing support orders as written through an automatic wage withholding system, relying on a separate proceeding to consider modification of the order.

(3) The obligor's right to seek modification remains intact. He or she may obtain modification in the state which has jurisdiction over the support order and have this modification recognized in the forum state, with any financial adjustments necessary made against future withholding. See Sections 2 and 9(a) regarding modification.

(4) Where support orders are retroactively modifiable in the original state, immediate withholding should be permitted in the forum state. If the obligor has his arrearages reduced in the original state, the forum state will be notified and withholding adjusted accordingly. See Sections 2, 9(a). As the withholding requirement is applied to new support obligations, the accumulation of large arrearages should not occur in most cases. As a practical matter, courts will seldom retroactively reduce small arrearages.

By limiting jurisdiction in the forum state exclusively to enforcement, this Act follows the example of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act of 1980. Under these statutes a state may have authority to enforce a custody decree but none to modify it. UCCJA §15 and comments; 28 U.S.C. §1738A(a). Modification authority, if any, is independent of enforcement authority and must be based upon specified jurisdictional grounds. UCCJA 14; 28 U.S.C. §1738A(f).

In addition to mistakes of fact, three other defenses are permitted under this act. Subsections (b)(2)-(4). These include two collateral attacks on the original judgment which could even be raised in the state which issued the original order if it sought to enforce it. These attacks include charges that the court which issued the original support order lacked jurisdiction (if this had not been previously litigated), or that there was fraud in the procurement of the judgment. See, Griffin v. Griffin, 327 U.S. 220 (1945); Scoles and Hay, Conflicts of Law §24.14 (1982); Leflar, American Conflicts of Law 157 (1977); Restatement (Second), Conflicts of Law §105 (1971). Fraud in the procurement of the support order refers to fraud in the actual obtaining of the order, e.g., the defendant was lured into the jurisdiction in order to obtain personal jurisdiction. The third defense concerns the statute of limitation. See Section 12(c) for choice of law provision pertaining to statute of limitations.

If the obligor meets his burden of proof, it may be necessary to obtain additional evidence in order to resolve the dispute. Subsections (c)-(g) offer means of proving a case without requiring the obligee or other witnesses to travel to the forum state. Subsections (c)-(e) apply when income withholding is being sought in the enacting state; sections (f)-(g) apply when the enacting state is seeking withholding elsewhere. The most common method of presenting evidence, without live courtroom testimony, is by deposition or interrogatory. These sections should augment existing state rules of civil procedure which address out-of-state evidence. For example, many states have adopted the Federal Rule of Civil Procedure 32(a)(3), which permits offering a deposition as evidence at a trial if the court finds that "the witness is at a greater distance than 100 miles from the place of trial or hearing." Many of these provisions are similar to those set forth in the Uniform Child Custody Jurisdiction Act, sections 18-20; therefore state experience under this Uniform Act in adducing evidence across state lines should be instructive. For a description of these techniques see Hoff, P., Schulman, J., and Volenik, A., Interstate Child Custody Disputes and Parental Kidnapping: Policy, Practice and Law, ch. 7 (1982).

Under subsection (c), an obligee may request that the case be continued for the purpose of submitting additional evidence should the obligor fully or partially meet his burden of proof. Income withholding must commence, however, where the right to such withholding is not in dispute, but only the extent of arrearages remains in controversy. This will occur when there is proof that an arrearage sufficient to trigger income withholding exists, but the full amount of arrearages is in dispute. In this scenario, withholding to cover current support and uncontested arrearages will commence. A subsequent hearing will be held to settle the dispute and the original withholding notice to the employer will be modified, if necessary. Subsection (d) addresses methods of collecting evidence, such as interrogatories, depositions, and court appearances live or by telephone. While it may be necessary to continue the case while such evidence is being obtained, these devices are also available for use at the initial hearing. Provisions for notifying the obligee of this first hearing (sections 2, 4(b)) should encourage this result.

SECTION 6. INCOME WITHHOLDING [ORDER/NOTICE]

If the obligor does not request a hearing in the time provided, or if a hearing is held and it is determined that the obligee has or is entitled to income withholding under the local law of the jurisdiction which issued the support order, the [agency] [court] shall issue an income withholding [order/notice] under section [cite to state's regular income withholding provision for notice to obligor of withholding decision]. The [agency] shall notify the requesting agency [or person] of the date upon which withholding will begin.

SECTION 7. NOTICE TO [EMPLOYER/PAYOR] AND OTHER PROVISIONS

The provisions of sections [governing this state's income withholding notice to the employer, penalties and sanctions against noncomplying employers, employer fees, protections against employer retaliation, payment directions, ability to issue a single check, etc.] apply to income withholding based on a support order of another jurisdiction entered under this Act.

COMMENT

These sections incorporate the state's own provisions for issuing an income withholding notice or order to the employer and for other employer-related matters. The latter include

requirements of the Child Support Enforcement Amendments of 1984, such as: contents of the notice to the employer, employer fees, payment mechanisms, and liability of employers who fail to withhold wages or who take adverse job action against an employee who is subject to wage withholding. The agency in the forum state must notify the requesting agency or person of the date on which withholding will begin.

Under section 7 the state will use its regular procedures to notify the employer or other payor of income that support payments must be withheld. The employer will treat the order or notice exactly like any other withholding order or notice. In fact, because of statutory limits on the content of the notice to the employer, the employer probably will not even know the withholding is based on a sister state order. See Social Security Act §466(b)(6)(A)(ii), 42 U.S.C. §666(b)(6)(A)(ii). For that reason, states will probably choose to require payment through the state agency in cases initiated by private counsel or pro se as well as in agency cases.

The language in section 6, "entitled to income withholding under the local law of the jurisdiction which issued the support order," refers to the triggering event in the original state, i.e., whether the amount of arrearages satisfies the requirement for income withholding under the law of the state that originally issued the support order. See also section 11(b)(2).

SECTION 8. DISTRIBUTION OF COLLECTED SUPPORT PAYMENTS

(a) The income withholding [order/notice] shall direct payment to be made to [agency]. The [agency] shall promptly transmit payments received pursuant to an income withholding [order/notice] based on a support order of another jurisdiction entered under this Act to the agency or person designated in section 3(b)(5)(c).

(b) A support order entered pursuant to section 3 does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state. Amounts collected by any withholding of income shall be credited against the amounts accruing or accrued for any period under any support orders issued either by this state or by a sister state.

COMMENT

Income withheld under this Act is to be paid to the income withholding agency of the forum state, which in turn will

forward it to the requesting agency or person. If the forum state uses a different entity such as a private agency or bank to collect and disburse such funds, as allowed under the Child Support Enforcement Amendments of 1984, Social Security Act §466(b)(5), 42 U.S.C. §666(b)(5), this entity should also collect and disburse funds withheld in interstate cases under this Act.

Entry of a support order for withholding purposes under this Act does not nullify any other support order which may exist - whether issued by the forum state or another state. When two or more orders exist for the support of one child by an absent parent, any amount collected will be credited against both orders. Such a situation may exist, for example, if there is both an original support order and a subsequent URESA order. Amounts withheld are to be credited against both orders.

SECTION 9. CHANGES

(a) Changes in original order: The [agency], upon receiving a certified copy of any amendment or modification to a support order entered pursuant to section 3, shall initiate, as though it was a support order of this state, necessary procedures to amend or modify the income withholding [order/notice] of this state which was based upon the entered support order. [The court shall amend or modify the income withholding [order/notice] to conform to the modified support order.]

(b) Changes in jurisdiction: If the [agency] determines that the obligor has obtained employment in another state or has a new or additional source of income in another state, it shall notify the agency which requested the income withholding of the changes within five working days of receiving that information and shall forward to that agency all information it has or can obtain with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income. The [agency] shall include with the notice a certified copy of the income withholding [order/notice] in effect in this state.

COMMENT

Subsection (a) assures that in the event a support order entered in the forum state is modified in another state, the forum state will take the necessary steps to modify the amounts withheld accordingly. The last sentence, in brackets, applies in states which use the judicial system to impose income withholding. The obligation of an agency to notify a sister

state agency of any change to a support order being enforced in the sister state may be found in section 2.

Under subsection (b), an agency in the forum state must notify the requesting agency when the obligor's source of income has shifted to yet another state. This presumes that when there has merely been a shift of a source of income within the state, e.g., if the obligor gets a new job, the state agency will take necessary steps, as it would with any other in state income withholding case, to obtain withholding against the new source of income within the state. Some states have facilitated the task of identifying new income by requiring employers to notify the agency of any change in the obligor/employee's status, including the name and address of a new employer, if known. N.D. Cent. Code §§14-09-09.1(6). The proposed federal regulations implementing the 1984 Amendments require that states impose an obligation on the employer to provide this information to the state. 49 Fed. Reg. 36803 (Sept. 19, 1984) 45 C.F.R. §302.100(d)(2). States should specifically provide that income withholding orders will apply against successor employers.

SECTION 10. VOLUNTARY INCOME WITHHOLDING

Any person who is the obligor on a support order of another jurisdiction may obtain voluntary income withholding by filing with the [agency] [court] a request for such withholding and a certified copy of the support order of a sister state. The [agency] [court] shall issue an income withholding [order/notice] under section [regular voluntary income withholding section]. Payment shall be made to the [agency].

COMMENT

The Child Support Enforcement Amendments of 1984 require states to withhold income upon the absent parent's request. This section allows such voluntary withholding when the underlying support order is from another state.

SECTION 11. CHOICE OF LAW

(a) The local law of this state shall apply in all actions and proceedings concerning the issuance, enforcement and duration of income withholding [orders/notices] issued by a [court] [agency] of this state, which is based upon a support order of another jurisdiction entered pursuant to section 3, except as provided in subsections (b) and (c).

(b) The local law of the jurisdiction which issued the support order shall govern the following:

(1) the interpretation of the support order entered under section 3, including amount, form of payment, and the duration of support;

(2) the amount of support arrearages necessary to require the issuance of an income withholding [order/notice]; and

(3) the definition of what costs, in addition to the periodic support obligation, are included as arrearages which are enforceable by income withholding, including but not limited to interest, attorney's fees, court costs, and costs of paternity testing.

(c) The [court] [agency] shall apply the statute of limitations for maintaining an action on arrearages of support payments of either the local law of this state or of the state which issued the support order entered under this Act, whichever is longer.

COMMENT

In keeping with a major principle of this Act -- that the forum state's regular income withholding laws and procedures be applied to the greatest extent possible -- most choice of law questions are resolved in favor of the local law of the forum, making it simpler for decision-makers to apply this Act.

Only three issues must be determined by the law of the state which issued the order. First are the questions of the interpretation of the original support order including questions about the amount and form of payments and the duration of the order. For example, the law of the state issuing the order would determine the meaning of the term "minor child" as used in an order, whether support may continue beyond the age of majority for a college student or whether in-kind payments would be credited against the support obligations. The law of the state which issued the original order determines the amount of support arrearages necessary to require the commencement of withholding. This should pose no problem as a request should not be made until this condition is met and a copy of the section of the state's withholding law containing this condition should be included with the request. Third, the law of the state which issued the support order determines what items are included as arrearages which may be

BEST COPY AVAILABLE

enforced by income withholding. These could include interest on late payments, attorneys' fees or costs of paternity determination, for example.

Under subsection (c), the forum state must use the statute of limitations of whichever state is longer. This allows maximum time for enforcement. This subsection combines two acceptable choice-of-law practices by joining them in the alternative: first, a state may "borrow" a sister state's statute of limitations period and second, a state may apply its own limitations period to enforce sister state judgments. Restatement (Second) Conflicts of Law §118(2)(1971).

This rule should not be difficult for local judges. Under general conflicts of laws principles a judge may assume that the law of the state whose support order is being considered is the same as the law of the forum state until one of the parties demonstrates otherwise. Obviously, it would be in the interest of the requesting state to submit an appropriate reference to the case and statutory law of the state which issued the order when a question is raised.

0193m

 BEST COPY AVAILABLE